IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Hari Narain @ Monu Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.556/2001)

D. B. Criminal Appeal under Sec.374(2) Cr.P.C. against the judgment dated 19-7-2001 in Sessions Case No.2/2001 passed by Sh. Bhagwan Das, RHJS, Additional Sessions Judge (Fast Track) No.2 Kota.

Date of Judgment: April 11, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Suresh Sahni] for the appellant.
Mr. R.M.Sharma]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Hari Narain @ Monu, the appellant herein, was placed on trial before learned Additional Sessions Judge (Fast Track) No.2, Kota, who vide judgment dated July 19, 2001convicted and sentenced the appellants under section 302 IPC to suffer life imprisonment and fine of Rs.2000/-, in default to further suffer rigorous imprisonment for six months.

2. The prosecution story runs as under:-

On August 9, 2000 at 6 Pm informant Nemichand (Pw.) submitted a written report (Ex.P-1) at Police Station Dadabari Kota to the effect that on the said day around 4 PM he had gone to nearby place of his house leaving his wife Ratan Bai alone at the house. Around 4.30 PM while he was coming

back he heard the shrieks of his wife. He rushed to his house and saw Hari Narain @ Monu (appellant) passing through with a knife stained with blood. He then raised alarm as a result of which people of vicinity gathered. Finding Hari Narain running, members of the crowd viz. Ramesh Kumar and Bhupendra Singh followed him. In the meanwhile police arrived at the spot. Injured Ratan Bai was removed to the hospital where she was declared dead. On that report case under section 302 IPC was registered and investigation commenced. Autopsy on the dead body was performed, statements of witnesses were recorded and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.2 Kota. Charge under section 302 IPC was framed. The appellant denied the charge and claimed trial. The prosecution in support of its case examined as many as 20 witnesses. In the explanation under section 313 Cr.P.C., the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. We have heard the submissions of learned counsel for the appellant as well as learned Public Prosecutor and with their assistance perused the record.

4. Since there was no eye witness of the incident the prosecution founded its case on the circumstantial evidence. The circumstances that were found established against the appellant by the learned trial court have been incorporated in para 10 of the impugned judgment thus:-

(i) Prior to the incident the appellant had threatened the

informant and his son of dire consequences.

(ii) Soon before the incident the appellant was seen entering the house of the deceased.

(iii) The appellant was also seen out side the house of the deceased armed with blood stained knife.

(iv) The deceased was found in an injured condition inside her house.

(v) Knife stained with human blood got recovered from the appellant on the date of incident.

(vi) Clothes of appellant stained with human blood were recovered.

(vii) The appellant was medically examined and injuries were found on his person.

5. Having scanned the record we notice that death of Ratan Bai was homicidal in nature. According to post mortem report (Ex.P-14) following ante mortem injuries were found on dead body:-

1. Incised wound 2 x ½cm x skin deep transverse just below Lt. pinna
2. Stab incised wound 2 x ½cm x muscle deep on base of neck Lt. side
3. Incised wound 2 x ½cm x skin deep on Lt. clavicle
4. Incised wounds (2in number) on Lt. shoulder 2 x ¼cm x skin deep
5. Incised wound 3 x ½cm x muscle deep back of Lt. hand
6. Stab wound 3 x ½ cm x trachea on front of neck lower part transverse with passing into trachea 1 x ¼cm x lumen open hematoma present
7. Incised wounds (2in no.) 2 x ¼cm x skin deep on Rt. side of neck.
8. Incised wound 2 x ¼cm x skin deep on Rt. clavicular region
9. Incised wound 2 x ¼cm x skin deep back of Rt. hand.

10. Incised wound ½ x ¼cm x skin deep back of Rt. hand.
11. Incised wound (2in no.) 3 x ¼cm x skin deep Rt. hand palmer side.
12. Stab wound 3 x ½cm x cavity deep on Rt. hypochondrium on dissection wound passing into Rt. lobe of liver
13. Incised wound 2 x ¼cm x skin deep on Epigastrium
14. Incised wounds (3in no.) 1 x ¼cm x skin deep on Rt. side umbilicus.

According to Dr.Ashok Mundra (Pw.11) the cause of death was shock as a result of injuries to liver and trachea.

First Circumstance:

6. In order to establish that the appellant had motive to kill the deceased, the prosecution examined informant Nemichand (Pw.1), who in his deposition stated that the appellant used to borrow money from him and he had threatened the informant of dire consequences:-

"हरिनारायण उर्फ मोनू हमारे यहां से लेनदेन करता था तथा मैं दलाली करता हूं यह हमारे यहां से पैसे भी ले जाता था। पैसो के मामले में ही इसने मेरी पत्नी के साथ मारपीट की व उसकी निर्मम हत्या की है। इसने पैसो के मामले में देख लेने की धमकी दी थी।"

7. Testimony of Nemichand gets corroboration from the statement of his son Manoj (Pw.20), who deposed that the appellant demanded from him a sum of Rs.5000/- and when he refused to part with money the appellant became angry:-

"हरिनारायण ने मुझसे पहले पैसे उधार लिये थे। मेरे पिताजी व मुझसे पैसे उधार लिये थे वह चुका दिये थे। दिनांक 2.8.2000 को हरिनारायण ने मुझसे 5000/- रूपये और मांगे मैंने कहा कि तुम समय पर नहीं देते हो इसलिए मैं नहीं देता इस बात से वह नाराज हो गया।"

8. The appellant admitted in his statement under section 313 CrPC that it was he who had supplied the ornaments to Nemichand. The relations between appellant and the family members of the deceased were strained and the prosecution is able to establish that prior to the incident the appellant had threatened the husband and son of the deceased.

Second Circumstance:

9. Heera Lal (Pw.2) was the neighbour of the deceased and he had seen the appellant near the house of deceased soon before the incident. Heera Lal deposed thus:-

> "9.8.2000 की बात है शाम को साढे चार पौने पांच बजे करीब में घर पर सामने अपने चाट का ठेला जमा रहा था और भटटी को आग लगा रहा था, लडका जिसका नाम मुझे बाद में मोनू मालूम पडा, वो नेमीचन्द जी जो हमारे पडौस में रहते है, उनके मकान में घुसा, 10-15 मिनट बाद आवाजे आने लगी , बचाओ बचाओ, मैं अपने घर के बाहर ही खडा रहा, मैंने सोचा कि इनका आपस का मामला होगा। पांच भी नहीं हुए कि वह लडका नेमीचन्द के घर से बाहर निकला, मैंने उससे पूछा कि क्या हुआ तो उसने जवाब नहीं दिया उधर से नेमीचन्द भी आ रहे थे, उस लडके के कपडे खून में हो रहे थे और हाथ में चाकू था..."

Learned counsel for the appellant vehemently contended that testimony of Heera Lal could not have been relied upon since his name did not appear in the FIR and his statements under section 161 CrPC were recorded after six days of the incident. We have given our thoughtful consideration to the submissions of learned counsel. It is well settled that question of delay in examining a witness is material only if it is indicative and suggestive of some unfair practice by the investigating agency. The investigating officer should be cross examined about the delay and the reasons therefor. Where there are concomitant circumstances to suggest that the investigation was deliberately marking time with a view to decide about

the shape to be given to the case and the eye witnesses to be introduced the inordinate delay in recording the statements casts a cloud of suspicion on the credibility of the entire prosecution story.

10. In the case on hand Satyapal Singh, Investigating Officer (Pw.19) who recorded the statements of Heera Lal after six days of the incident, was cross examined at length but it does not appear that Heera Lal was introduced by the IO to falsely implicate the appellant. It is established that on the date of incident Heera Lal was residing in the house No.130 Basant Vihar whereas house No.116 of the deceased was in the vicinity of house No.130. On every evening Heera Lal used to sell spicy eatables (chat) on a Thela in front of his house. Thus his presence at the time of incident cannot be doubted. On examining the entire testimony of Heera Lal from the point of view of trustworthiness we find it truthful and reliable.

Third Circumstance:

11. To establish that the appellant was seen out side the house of deceased armed with blood stained knife the prosecution examined Nemi Chand (Pw.1), Heera Lal (Pw.2), Ramdevi (Pw.3), Ramesh Kumar (Pw.9), Anju Saheliya (Pw.10), Sndhya Jain (Pw.12), Sarita Pariyani (Pw.13), Bhupendra Yaduvanshi (Pw.18) and Satyapal Singh (Pw.19). Conjoint reading of the statements of these witnesses would prove that the appellant was running with a knife stained with blood out side the house of the deceased. These witnesses chased him and caught hold of him. Contention of learned counsel for the appellant that mandate of Rajasthan Police Rules,1965 was not followed in letter and spirit in drawing arrest memo, site plan and recovery memo, does not falsify the evidence of prosecution

witnesses. Irregularity in following the procedure does not discredit the testimony of trustworthy of witnesses.

Fourth, Fifth, Sixth and Seventh circumstances:

12. We also find that fourth, fifth, sixth and seventh circumstances have been established by the prosecution. From the evidence of Dr.Ashok Mundra (Pw.11) it is established that the deceased had sustained as many as 14 antemortem incised/ stab wounds and cause of death was shock as a result of injuries to liver and trachea. Autopsy on the dead body was performed vide post mortem report (Ex.P-14). Site Plan (Ex.P-3) of the place of incident was drawn. The appellant was arrested vide arrest memo (Ex.P-23) and from his possession knife stained with blood got recovered vide memo (Ex.P-10). Blood stained clothes of the appellant got recovered vide memo (Ex.P-7). The injuries sustained by the appellant were examined vide injury report (Ex.P-19).

13. In the ultimate analysis we find that the prosecution has established all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved form such a chain of evidence that no other conclusion other than the guilt of the appellant arrives.

14. For these reasons we find no merit in this appeal and it accordingly stands dismissed.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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